

**CFP BOARD**

# COMMENTARY

**TO CODE OF ETHICS AND STANDARDS OF CONDUCT**

MARCH 2018, AS REVISED IN NOVEMBER 2018

# COMMENTARY TO CODE OF ETHICS AND STANDARDS OF CONDUCT

March 29, 2018, as revised on November 27, 2018

Certified Financial Planner Board of Standards, Inc. (“CFP Board”) has adopted a revised *Code of Ethics and Standards of Conduct* (“*Code and Standards*”) that requires a CFP® professional to act as a fiduciary, and therefore, to act in the best interests of the client, at all times when providing financial advice. To allow time for implementation, the *Code and Standards* will become effective on October 1, 2019. CFP Board intends for this document to provide context for the revised *Code and Standards*.

## I. BACKGROUND

CFP Board is a certification and standards-setting organization that was founded in 1985 as a non-profit under section 501(c)(3) of the Internal Revenue Code. CFP Board benefits the public by establishing and enforcing education, examination, experience, and ethics requirements for CFP® professionals. All CFP® professionals agree to abide by high standards for competency and ethics, which CFP Board periodically reviews and updates, to maintain the value, integrity, and relevance of the CFP® certification.

CFP Board’s predecessor organization, the International Board of Standards and Practices for Certified Financial Planners (“IBCFP”), introduced the first *Code of Ethics* in 1985. In 1986, IBCFP revised the *Code of Ethics* and integrated new *Standards of Practice*. In 1993, IBCFP adopted a new name, the *Code of Ethics and Professional Responsibility*, divided the standards into Principles and Rules, added a *Terminology* section, and made substantive revisions. In 1998, CFP Board adopted the first two steps of the Financial Planning *Practice Standards* (“*Practice Standards*”). CFP Board added the third step of the *Practice Standards* in 1999, the fourth and fifth steps in 2000, and the sixth and final step in 2001. CFP Board adopted the current *Standards of Professional Conduct* in 2007, which substantively revised and renamed as *Rules of Conduct* the Rules portion of the *Code of Ethics and Professional Responsibility*.

In December 2015, CFP Board announced the formation of a Commission on Standards to review and recommend to CFP Board’s Board of Directors proposed changes to the *Terminology*, *Code of Ethics and Professional Responsibility*, *Rules of Conduct*, and *Practice Standards* sections of the *Standards of Professional Conduct*. Commission members included CFP® professionals and others in the financial services industry who operate under diverse business models, regulatory experts, a consumer advocate, and a representative of the public. CFP Board sought input from a variety of stakeholders, including by hosting seventeen public forums in cities located across the country and meeting with the Financial Planning Association, the National Association of Personal Financial Advisors, CFP Board’s Business Model Council (which is comprised of firm representatives from a wide range of business models), and many additional stakeholders, including CFP® professionals and the firms at which they work. CFP Board also issued for public comment two drafts of the proposed *Code and Standards*, and considered more than fifteen hundred written comments and hundreds of oral comments. CFP Board has adopted the revised *Code and Standards* after following this deliberative, inclusive, and transparent process.

## PREAMBLE AND CODE OF ETHICS

The *Code and Standards* begins with a four-sentence Preamble that captures the purpose and effect of the *Code and Standards*:

CFP Board’s *Code of Ethics and Standards of Conduct* reflects the commitment that all CFP® professionals make to high standards of competency and ethics. CFP Board’s *Code and Standards* benefits and protects the public, provides standards for delivering financial planning, and advances financial planning as a distinct and valuable profession. Compliance with the *Code and Standards* is a requirement of CFP® certification that is critical to the integrity of the CFP® marks. Violations of the *Code and Standards* may subject a CFP® professional to discipline.

CFP Board also revised the Code, which currently contains both principles and explanatory language. When CFP Board integrated the *Code and Standards*, the Code no longer required explanatory language. Therefore, the Code sets forth principles that guide the behavior of CFP® professionals, with elaboration provided in the *Standards* that follow. The result is a concise Code that serves as a meaningful vehicle for communicating the commitment that CFP® professionals make to high standards of competency and ethics.

## II. DUTIES OWED TO CLIENTS

### A1: FIDUCIARY DUTY

The current *Standards* impose a fiduciary duty on a CFP® professional when providing Financial Planning. The *Code and Standards* extends the application of the fiduciary duty to all Financial Advice. CFP Board's reasons for that decision are set forth below.

As a 501(c)(3) non-profit corporation, CFP Board is required to act in the public interest. CFP Board's vision is for the public to value financial planning and benefit from professionals' adherence to a fiduciary standard. CFP Board's mission is to benefit the public by granting the CFP® certification and upholding it as the recognized standard of excellence for competent and ethical personal financial planning. CFP Board's Board of Directors and executive leadership team have developed a strategic plan for the organization's operations in support of that mission. The latest plan, adopted in November 2016, sets forth four strategic priorities, one of which is assuring accountability by, among other things, advocating for fiduciary advice.

CFP Board first adopted a fiduciary duty in 2007, when it issued revised *Standards* providing that a CFP® professional owes to the client a fiduciary duty when providing financial planning or material elements of financial planning. CFP Board defined a fiduciary as one who acts in utmost good faith, in a manner he or she reasonably believes to be in the best interests of the Client.

Consistent with CFP Board's vision and mission, and in furtherance of a strategic plan that is committed to a fiduciary standard, the *Code and Standards* expands the application of the fiduciary duty to all Financial Advice. Financial Advice includes discretionary authority as well as communications that would be viewed as a recommendation that the Client take or refrain from taking a particular course of action with respect to a wide range of financial matters. Communications that do not fall within that definition, such as responses to directed orders, are not Financial Advice. The definition of Financial Advice also excludes the provision of services or the furnishing or making available of marketing materials, general financial education materials, or general financial communications that a reasonable CFP® professional would not view as Financial Advice.

The fiduciary duty is the crown jewel that animates a CFP® professional's commitment to high standards. Under the *Code and Standards*, the public will know that a CFP® professional is committed to acting as a fiduciary at all times when providing Financial Advice, and not just when providing Financial Planning, as is the case under the current *Standards*. As a result, a CFP® professional will owe Clients the same fiduciary duty when providing Financial Planning and when providing other Financial Advice, thereby eliminating any confusion concerning the applicable standard whenever the CFP® professional provides both types of services.

The *Code and Standards* sets forth an objective standard requiring a CFP® professional providing Financial Advice to act in the best interests of the Client. In that regard, a CFP® professional will be subject to a duty of loyalty, a duty of care, and a duty to follow client instructions. The *Code and Standards* provides explanations of each of these duties drawn from the common law of fiduciaries. The duty of loyalty requires a CFP® professional to:

- (1) Place the interests of the Client above the interests of the CFP® professional and the CFP® Professional's Firm;
- (2) Avoid Conflicts of Interest, or fully disclose Material Conflicts of Interest to the Client, obtain the Client's informed consent, and properly manage the conflict; and
- (3) Act without regard to the financial or other interests of the CFP® professional, the CFP® Professional's Firm, or any other individual or entity other than the Client, which means that a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client's interest above the CFP® professional's.

The duty of care requires a CFP® professional to act with the care, skill, prudence and diligence that a prudent professional would exercise in light of the Client's goals, risk tolerance, objectives, and financial and personal circumstances.

The duty to follow client instructions requires a CFP® professional to comply with all objectives, policies, restrictions, and other terms of the Engagement and all reasonable and lawful directions of the Client.

CFP® professionals support the expanded fiduciary standard. More than ninety-six percent of CFP® professionals who responded to a survey agreed that a CFP® professional should be required to act in the Client's best interest when providing Financial Advice. The two leading Financial Planning membership organizations, the Financial Planning Association (FPA) and the National Association of Personal Financial Advisors (NAPFA), also support the standard. FPA applauded CFP Board "for taking the bold and necessary step in expanding the fiduciary standard for CFP® professionals." NAPFA also commented that the proposal "supports CFP Board's efforts to [broaden] fiduciary requirements for CFP® professionals. Working under fiduciary principles is the most transparent – and we believe the most objective – way of serving the public. Consumers have come to expect advice delivered in their best interest and will now be able to count on a CFP® professional to provide it at all times when giving financial advice."

Investor and consumer organizations, including AARP, Americans for Financial Reform, Better Markets, Center for American Progress, Consumer Action, Consumer Federation of America, Institute for the Fiduciary Standard, National Consumers League, and the National Employment Law Project, offered the same view. According to Consumer Action: "By extending the fiduciary duty to all financial advice, clients will receive fiduciary-level advice whenever CFP® professionals offer any kind of financial advice, no matter the services being provided. This is a crucial distinction and one that provides a model for advice standards throughout the financial industry, regardless of the business model and pricing used by the CFP® professional. The [*Code and Standards*] clarify what fiduciary duty entails, including the duty of loyalty, a duty of care, and a duty to follow client instructions."

Other commenters opposed expanding the application of the fiduciary duty from Financial Planning to Financial Advice. They contended that expansion of the fiduciary duty will harm low-income investors, impede lower-cost brokerage services, expose firms and individual advisors to greater risk of liability for non-compliance, and impose significant implementation costs on firms that are required to supervise CFP® professionals. They also asserted that the *Code and Standards* would be confusing, difficult to apply, and inconsistent with other industry rules. They encouraged CFP Board to await a final rulemaking from the Securities and Exchange Commission (SEC) that would include a heightened standard of conduct for broker-dealers. Others opposed to the expansion of the fiduciary duty contended that CFP Board is not a regulator and should not have standards that exceed existing law.

For the reasons provided below, CFP Board disagrees with those who oppose extending the application of the fiduciary duty from Financial Planning to all Financial Advice.

**CFP Board Properly Sets Professional Standards:** CFP® professionals currently are subject to several levels of oversight. Most CFP® professionals are subject to federal and state laws and regulations, including those imposed by self-regulatory organizations such as FINRA. On top of the law's baseline requirements, firms may impose on CFP® professionals an added level of requirements. Professional standards-setting organizations, like CFP Board, exist in part to set standards that exceed those required by the law or the firm. CFP Board historically has set ethical standards that some CFP® professionals could not meet merely by complying with the law or their firm's policies. For example, in 2007, CFP Board adopted a requirement that a CFP® professional act as a fiduciary when providing Financial Planning, even in circumstances where the law did not so require. The *Code and Standards* continues to reflect this private ordering by setting high standards of competency and ethics.

Although CFP Board sets standards for financial planners, the standards, as currently in place, are not limited to when a CFP® professional provides Financial Planning. The current *Standards* contain several rules that distinguish between Financial Planning and other services that a CFP® professional provides to Clients. The current *Standards* also governs conduct that occurs in a non-professional capacity. To suggest that the *Code and Standards* should address only Financial Planning is to ignore CFP Board's history and mission.

**Consumers Expect Financial Professionals to Act in Their Best Interests:** A growing body of evidence shows that consumers want and expect Financial Advice that is in their best interest. For example, in a study conducted by Financial Engines in 2016 titled, “In Whose Best Interest? What Americans know and what they want when it comes to retirement investment advice,” ninety-three percent of respondents said it is important that all financial advisors be legally required to put their clients’ best interests first when providing advice on retirement savings. A 2016 survey of retirement savings account holders by AARP found that more than nine in ten (ninety-two percent) investors who have received professional Financial Advice in the past believe it is important that professional financial advisors give advice that is in the best interests of their clients. A 2010 study conducted by Info Group found that “[n]early all U.S. investors support the fiduciary standard for investment professionals providing advice.” These and other studies make clear that consumers expect financial professionals to act in their best interest. As CFP Board’s mission is to promote the public interest, CFP Board must set standards that take into account the public’s reasonable expectations, including the expectation that a CFP® professional will act as a fiduciary when providing Financial Advice to a Client.

**The Fiduciary Duty Will Not Be Confusing or Difficult to Apply:** CFP Board does not agree that the fiduciary duty will be confusing or difficult to apply. That was not a significant concern during the nearly ten years that CFP Board has held CFP® professionals to a fiduciary standard when providing Financial Planning or material elements of Financial Planning. Moreover, CFP Board’s fiduciary standard is consistent with the Investment Advisers Act of 1940. CFP® professionals have been able to act in their Clients’ best interest when providing Financial Advice; indeed, many firms have built policies and procedures specifically designed to do so. Moreover, most commenters voiced strong support for CFP Board’s articulation of the expanded fiduciary duty. Comments requesting specific changes to the standard are addressed below.

Some commenters opposed CFP Board’s inclusion of the words “at all times” in the fiduciary duty. These commenters appear to have misinterpreted the standard to mean that the fiduciary duty applies at all times, rather than at all times when providing Financial Advice. While keeping (or removing) “at all times” would not have a substantive impact here because the words do not broaden or narrow the scope of the standard (the obligation applies “when providing Financial Advice,” regardless of whether the words are included or excluded), the language serves the important purpose of reinforcing that there are no exceptions to a CFP® professional’s duty to act as a fiduciary when providing Financial Advice.

Other commenters, including NAPFA, requested that the standard encourage “avoidance” of conflicts over “disclosure” of conflicts. Some commenters would require a CFP® professional to “avoid” conflicts whenever possible, and provide a “disclosure/informed consent” alternative only in circumstances where it is impossible to avoid the conflicts. However, many conflicts operate at the firm level and are outside the direct control of the CFP® professional. Therefore, a requirement to avoid conflicts whenever possible might be misread as a requirement to avoid certain business models entirely, which is not CFP Board’s intent. In addition, because CFP Board certifies individuals and not firms, its *Code and Standards* focuses on a CFP® professional’s responsibility to manage conflicts to ensure they do not inappropriately influence a CFP® professional’s recommendations. Moreover, while many conflicts can be avoided, at least in theory, there are some conflicts that, as a practical matter, cannot be avoided. There is, for example, a conflict when a Client pays a CFP® professional for providing services, regardless of the compensation method. The *Code and Standards* thus provides that CFP® professionals shall either avoid conflicts or disclose and manage conflicts that are not avoided, and leaves it to a CFP® professional to determine how to manage those conflicts to ensure that they are not allowed to taint the Financial Advice.

Some commenters questioned whether the duty to follow Client instructions contradicts the obligation to act in the best interests of the Client. CFP Board does not agree that there is such a conflict. A CFP® professional acts as an agent of the Client, and has a duty to follow the terms of the Engagement and the Client’s reasonable and lawful instructions. A Client with capacity who is not acting under the undue influence of another has the authority to determine what is in his or her best interests. Where the CFP® professional believes that the Client’s instructions are not in the best interests of the Client, the CFP® professional must so advise the Client. A CFP® professional may elect to terminate the Engagement if the Client instructs the CFP® professional to take actions that a CFP® professional believes are not in the Client’s best interests.

Some commenters objected to the requirement that a CFP® professional must “act without regard to the financial or other interests of the CFP® professional, the CFP® Professional’s Firm, or any individual or entity other than the Client.” This means that “a CFP® professional acting under a Conflict of Interest continues to have a duty to act in the best interests of the Client and place the Client’s interest above the CFP® professional’s.” Contrary to concerns raised by some commenters, the requirement to act without regard to the financial or other interests of a CFP® professional or a CFP® Professional’s Firm does not constitute a requirement to avoid all conflicts. CFP Board recognizes that both fees and commissions entail conflicts of interest, and that a CFP® professional may act in the Client’s best interests notwithstanding that conflict. The reference to “other interests” makes clear that CFP Board will consider interests beyond those that are financial. This provision also makes clear that the obligation to act in the best interests of the Client is not satisfied by disclosure alone.

**The Fiduciary Duty is Consistent with Existing Law:** The fiduciary duty is consistent with existing legal standards. The *Code and Standards* does not require a CFP® professional to do less than the law requires. Those who comply with CFP Board’s *Code and Standards* will not, by doing so, be in violation of existing laws and regulations. Instead, as noted above, CFP Board’s *Code and Standards* in some circumstances may match legal requirements, and in other circumstances may exceed legal requirements, for the benefit of the public and the profession. Standards that exceed what the law requires do not conflict with the law.

**The Fiduciary Duty Will Not Harm or Confuse Investors:** CFP Board does not agree that the fiduciary rule will harm low-income investors. In today’s complex financial marketplace, many consumers turn to a financial professional to help them make good decisions. Yet when they seek Financial Advice, they face a marketplace in which it is virtually impossible to distinguish a salesperson from an advisor or between those advisors who are legally obligated to provide Financial Advice in their best interests versus those who are not. In other words, a Client may receive the same Financial Advice from a professional who receives compensation for selling products and a professional who receives compensation for providing investment advice or Financial Planning. The fiduciary duty thus reflects the simple and unambiguous principle that CFP® professionals operating under all business models always must provide Financial Advice to Clients that is in their best interests.

CFP Board does not believe that the fiduciary duty will harm moderate- and low-income consumers. To the contrary, small account holders and moderate-income investors stand to benefit most from a fiduciary standard. The academic literature makes clear that less wealthy, financially unsophisticated consumers are most at risk of receiving Financial Advice that is not in their best interests. While the financial advisor may make a substantial profit off recommendations that are not in the consumer’s best interest, the consumer pays a heavy price – through higher costs, substandard features, elevated risks, or poor returns. Moreover, many providers offer fiduciary advice to small investors, providing proof that there is no fundamental incompatibility between the fiduciary duty and business models that are designed to serve small accounts.

Because consumers already expect all Financial Advice to be provided in their best interests, CFP Board also does not believe that consumers will be confused by standards that require a CFP® professional to provide Financial Advice in accordance with fiduciary standards, in his or her Clients’ best interests.

**Cost Burdens:** The fiduciary duty is business-model neutral, as it applies to all CFP® professionals regardless of the business model in which they operate. CFP Board recognizes that firms may incur additional costs associated with a CFP® professional’s compliance with CFP Board’s fiduciary duty. Many of those firms, however, represent that they already are acting in their clients’ best interests. Moreover, some firms have already incurred those costs in seeking to comply with legal requirements. Finally, CFP Board has set an October 1, 2019 implementation date to afford ample opportunity for the implementation of any changes or additional resources needed to comply with the *Code and Standards*.

**Risk of Third-Party Liability:** Some are concerned that the *Code and Standards* presents a liability risk. CFP Board’s current *Standards* states that “the *Rules of Conduct* are not designed to be a basis for legal liability to any third party.” The *Code and Standards* does not alter CFP Board’s intent. It remains the case that the *Code and Standards* are not designed to be a basis for civil liability, and that Clients of a CFP® professional and other third parties are not intended to be considered third-party beneficiaries of a CFP® professional’s agreement to adhere to the *Code and Standards*.

## **A2: INTEGRITY**

The Integrity standard has two subsections. The first subsection makes clear that integrity demands honesty and candor, which may not be subordinated to personal gain or advantage. The second subsection contains a prohibition against fraud that appears in the existing regulatory structure, the interpretations of which will guide interpretation of this standard.

## **A3: COMPETENCE**

The Competence standard incorporates provisions requiring both knowledge and skill. It requires a CFP® professional, when not sufficiently competent, to gain competence, obtain assistance, limit or terminate the Engagement, and/or refer the Client to a competent professional. In that circumstance, the CFP® professional must describe to the Client the requested services that the CFP® professional will not be providing.

## **A4: DILIGENCE**

The Diligence standard sets forth a concise requirement: to provide Professional Services, including responding to reasonable Client inquiries, in a prompt and thorough manner.

## **A5: DISCLOSE AND MANAGE CONFLICTS OF INTEREST**

The Disclose and Manage Conflicts of Interest standard draws on requirements set forth in the Advisers Act and articulated in the instructions to Form ADV Parts 1 and 2A. A CFP® professional will be required to make full disclosure of all Material Conflicts of Interest that could affect the professional relationship, and provide sufficiently specific facts so that a reasonable Client would be able to understand the Material Conflicts of Interest and the business practices that give rise to the conflicts and give informed consent to such conflicts or reject them. A CFP® professional must make full disclosure and obtain the consent of the Client before providing any Financial Advice regarding which the CFP® professional has a Material Conflict of Interest. The standard sets forth the manner for determining the circumstances under which CFP Board will infer that a Client has consented to a Material Conflict of Interest, makes clear that written consent to a conflict is not required, and provides that ambiguity in the disclosure will be interpreted in favor of the Client. The standard also requires a CFP® professional to adopt and follow business practices reasonably designed to prevent Material Conflicts of Interest from compromising the CFP® professional's ability to act in the Client's best interests.

A commenter suggested that the standard should apply to all conflicts, not just Material conflicts. CFP Board does not agree with this comment. Materiality is an appropriate limitation on the requirement. If a reasonable Client or prospective Client would not consider the conflict information important in making a decision (the definition of materiality under the *Code and Standards*), then a CFP® professional is not required to disclose the conflict.

Some commenters also requested that CFP Board define "informed consent." CFP Board does not agree that such a definition is necessary. The Advisers Act requires disclosure of and consent to conflicts, and has been interpreted to require informed consent, but the Advisers Act does not define informed consent. Whether a Client has provided informed consent depends on the facts and circumstances and may be inferred when not explicit. For example, silence after disclosure may constitute informed consent if the disclosure contains sufficiently specific facts that are understandable to a reasonable Client, but may not constitute informed consent if that is not the case. CFP Board intends for its "informed consent" standard to be interpreted in a manner that is consistent with interpretations of the Advisers Act, and CFP® professionals may refer to guidance and case law interpretations.

Several commenters strongly supported the standard requiring a CFP® professional to manage Conflicts of Interest. As Better Markets noted, "disclosure does not and cannot adequately protect investors from the harmful impact of conflicts of interest." Some commenters, however, requested that CFP Board require "mitigation" instead of management of conflicts. CFP Board prefers the term manage to the term mitigation, however, because not all conflicts are susceptible to mitigation; rather, they may continue in their existing form. Moreover, CFP Board is concerned that the use of the term "mitigate" would introduce ambiguity because of the difficulty in specifying the extent of mitigation that is necessary. CFP Board has concluded that the more workable requirement is for a CFP® professional to manage the conflict through the adoption of disclosed business practices that prevent the conflict from harming the Client's best interests. (As discussed above, the obligation to act in the Client's best interest remains when conflicts are present.)

Some commenters suggested that the standard should require written disclosure of Material Conflicts of Interest. CFP Board recognizes, however, that in some business models and in some circumstances, such a requirement may present logistical challenges, and thus the proposal does not include such a requirement. CFP Board has made clear, however, that evidence of oral disclosure of a conflict will be given such weight as CFP Board in its judgment deems appropriate. Another commenter similarly suggested that CFP Board require that consent to Material Conflicts of Interest be in writing. CFP Board's standard, however, is consistent with the Advisers Act standard, which does not require the disclosure or consent to be in writing.

Other commenters have requested that CFP Board explain how a CFP® professional should manage Conflicts of Interest. Since management of conflicts will vary depending on the facts and circumstances of the situation, and possibly the business model involved, such explanation is more appropriate for guidance documents, not the *Code and Standards*.

#### **A6: SOUND AND OBJECTIVE PROFESSIONAL JUDGMENT**

The Sound and Objective Professional Judgment standard sets forth a principles-based standard for addressing gifts and other consideration that could be expected to compromise objectivity. The standard provides that a CFP® professional must exercise professional judgment on behalf of the Client that is not subordinated to the interest of the CFP® professional or others. A CFP® professional may not solicit or accept any gift, gratuity, entertainment, non-cash compensation, or other consideration that reasonably could be expected to compromise the CFP® professional's objectivity. CFP Board intentionally did not identify specific dollar limitations and was not persuaded by the comments requesting that they be added.

#### **A7: PROFESSIONALISM**

The *Code and Standards* recognizes that it is important for a CFP® professional to act with professionalism. This standard requires a CFP® professional to treat others with dignity, courtesy, and respect.

#### **A8: COMPLY WITH THE LAW**

The obligation to comply with the law serves as a foundation for the *Code and Standards*. This standard requires a CFP® professional to comply with laws, rules, and regulations governing professional activities and prohibits intentional or reckless participation or assistance in another person's violations. Violations of the law in areas outside of professional activities are addressed in the Duties to CFP Board section of the *Code and Standards*.

#### **A9: CONFIDENTIALITY AND PRIVACY**

The Confidentiality and Privacy standard identifies specific circumstances under which non-public personal information may be disclosed, limits a CFP® professional's use of the information, and requires a CFP® professional to take reasonable steps (directly or indirectly) to protect the security of the information and to adopt, implement, and provide notice to Clients of policies regarding the protection, handling, and sharing of the information.

CFP Board intends for the standard – which applies to a CFP® professional – to be consistent with regulatory requirements that apply to their firms. Moreover, the standard does not conflict with firm policies because it does not require the CFP® professional to disclose the information; rather, the standard identifies the information that a CFP® professional may disclose without violating CFP Board's standards. CFP Board has adopted a safe harbor that states a CFP® professional shall be deemed to comply with this Section if the CFP® Professional's Firm is subject to, and the CFP® professional complies with, Regulation S-P under the federal securities laws or substantially equivalent federal or state laws or rules.

#### **A10: PROVIDE INFORMATION TO A CLIENT**

The Provide Information to a Client standard requires a CFP® professional to provide eight categories of information when Financial Planning is not required, and an additional category when Financial Planning is required. The obligation to provide full disclosure of Material Conflicts of Interest is set forth elsewhere in the *Standards*, in the Duty to Disclose and Manage Conflicts of Interest, and thus is incorporated by reference in this standard.

When providing Financial Advice, a CFP® professional will be required to provide the following information to the Client:

- i. A description of the services and products to be provided;
- ii. How the Client pays for the products and services, and a description of the additional types of costs that the Client may incur, including product management fees, surrender charges, and sales loads;
- iii. How the CFP® professional, the CFP® Professional's Firm, and any Related Party are compensated for providing the products and services;
- iv. The existence of any public discipline or bankruptcy, and the location(s), if any, of the webpages of all relevant public websites of any governmental authority, self-regulatory organization, or professional organization that sets forth the CFP® professional's public disciplinary history or any personal bankruptcy or business bankruptcy where the CFP® professional was a Control Person; and
- v. The information required under Section A.5.a. (Conflict of Interest Disclosure);
- vi. The information required under Section A.9.d. (Written Notice Regarding Non-Public Personal Information);
- vii. The information required under Section A.13.a.ii. (Disclosure of Economic Benefit for Referral or Engagement of Additional Persons); and
- viii. Any other information about the CFP® professional or the CFP® Professional's Firm that is Material to a Client's decision to engage or continue to engage the CFP® professional or the CFP® Professional's Firm.

When providing or required to provide Financial Planning, a CFP® professional also will be required to provide to the Client the terms of the Engagement between the Client and the CFP® professional or the CFP® Professional's Firm. The terms of the Engagement include the Scope of Engagement and any limitations, the period(s) during which the services will be provided, and the Client's responsibilities. The terms-of-the-engagement requirement is limited to Financial Planning as a practical concession in response to concerns over the burden that might result if the requirement were to apply to all engagements, regardless of their scope. A CFP® professional also will be responsible for implementing, monitoring, and updating the Financial Planning recommendation(s) unless specifically excluded from the Scope of Engagement.

Some commenters suggested requiring a CFP® professional to disclose the actual dollar amount of his or her compensation, or a good faith estimate with more information provided at the time of implementation. CFP Board decided not to include that requirement because a CFP® professional may not know the exact amount of compensation at the time of the Engagement, and because the final dollar amount of compensation for some products may be unknown to the CFP® professional.

A commenter suggested requiring a CFP® professional to disclose a summary of his or her disciplinary history instead of a link to the relevant website. CFP Board decided not to require such a summary out of concern that a CFP® professional, in providing that summary, might unintentionally omit information set forth in the public disciplinary history that a Client would consider relevant.

Several commenters were concerned that a client who engages a CFP® professional believes he or she will receive Financial Planning regardless of the engagement based on the CFP® professional's use of the CFP® marks. These commenters recommended that CFP Board require a CFP® professional who is not engaged to provide Financial Planning to explicitly inform the Client in writing that the CFP® professional will not provide Financial Planning to the Client. CFP Board preferred the approach of requiring a CFP® professional to disclose to the Client "a description of the services and products to be provided," as this disclosure provides the Client with information necessary to understand the engagement.

A CFP® professional must provide the additional information required under other sections of the *Code and Standards*. Therefore, this standard references the other requirements.

**Form, Timing of Delivery, and Documentation:** The standard allows for oral delivery where Financial Planning is not required. The standard also requires a CFP® professional to document that the CFP® professional has provided the information to the Client, but allows for flexibility in satisfying the standard by not requiring any

particular form of documentation. When Financial Planning is required, a CFP® professional must provide the information in writing, but may do so in one or more documents.

A CFP® professional is required to deliver the information prior to or at the time of the Engagement, which is consistent with the SEC’s delivery requirement for the Form ADV Parts 2A and 2B. A CFP® professional has an ongoing obligation to provide the Client with any information that is a Material change or update. Material changes and updates to public disciplinary history or bankruptcy information must be disclosed to the Client within ninety days, together with the location(s) of the relevant webpages.

### **A11: DUTIES WHEN COMMUNICATING WITH A CLIENT**

The Duty When Communicating with a Client standard requires a CFP® professional to provide accurate and understandable information in accordance with the Engagement and in response to reasonable requests, and to disclose public discipline and bankruptcies.

### **A12: DUTIES WHEN REPRESENTING COMPENSATION METHOD**

Some members of the public are interested in working with a fee-only financial planner. This has created an incentive for a CFP® professional (and others) to describe his or her compensation method as fee-only. Given the strong public interest, CFP Board has had standards for more than two decades that dictate when a CFP® professional may represent the CFP® professional’s or the CFP® Professional’s Firm’s compensation method as “fee-only.” CFP Board is compensation neutral. The standard always has been focused on accurate representations.

The *Code and Standards* builds upon this experience. The Duties When Representing Compensation Methods standard begins with the principle that a CFP® professional may not make false or misleading representations of compensation method, and then addresses two specific compensation representations: fee-only and a term that the *Standards* previously did not specifically address, fee-based.

The standard defines the term fee-only by exclusion, and addresses whose compensation the standard should consider in determining whether fee-only is an appropriate compensation representation. A CFP® professional may describe his or her or the CFP® Professional’s Firm’s compensation method as fee-only only where:

- (a) The CFP® professional and the CFP® professional’s Firm receives no Sales-Related Compensation; and
- (b) Related Parties receive no Sales-Related Compensation in connection with any Professional Services the CFP® professional or the CFP® Professional’s Firm provides to Clients.

“Sales-Related Compensation,” “Related Party,” and “In Connection with any Professional Services” are defined terms that are discussed below.

The term “fee-based” is frequently used in the profession but does not have a universally-accepted meaning. At the public forums CFP Board held at the outset of the standards-setting process, some commenters suggested prohibiting use of the term. CFP Board decided not to take that approach, but instead chose to set requirements for using the term fee-based. The standard makes clear that “fee-based” is equivalent to “commission and fee.” The standard then provides that a CFP® professional who represents his or her or CFP® Professional’s Firm’s compensation method as fee-based must not use the term in a manner that suggests the CFP® professional or the CFP® Professional’s Firm is fee-only, and must clearly state either that the CFP® professional or the CFP® Professional’s Firm earns both fees and commissions, or are not fee-only. This standard also applies to other terms that, like fee-based, may be confused with a fee-only compensation method.

Other commenters stated that the standards should define “commission” and “commission-only.” CFP Board disagrees. Such definitions would add little value because there is not the same history of misusing these terms or using them to obscure the method of compensation. Moreover, the definition of Sales-Related Compensation includes commissions, and the standard does not prohibit a CFP® professional from using the term “commission-only.” A commenter also proposed a standard that would require all CFP® professionals to use one of three terms to represent their compensation method: Commission and Fee, Commission-only, and Fee-only. CFP Board disagrees, and has opted to address false or misleading statements instead of dictating the ways in which a CFP® professional may describe his or her compensation method.

**Sales-Related Compensation:** The compensation-representation standard is designed to label compensation as Sales-Related Compensation when the compensation provides incentives for the purchase or sale of Financial Assets, which presents a Conflict of Interest. While sales incentives often are characterized as commissions, other compensation incentives (such as 12b-1 fees) present the same type of conflict. The term Sales-Related Compensation captures all such compensation incentives. To account for compensation that is based on a Client's decision to hold an asset, such as an incentive to advise a Client to annuitize a pension rather than take a lump sum, the Sales-Related Compensation definition also includes compensation received from "holding" Financial Assets for purposes other than to provide Financial Advice. The latter clause thus excludes fees for managing assets. Sales-Related Compensation also includes compensation for the referral of a Client to any person or entity other than the CFP® Professional's Firm, as the referral constitutes a Professional Service provided to a Client.

The standard sets forth common examples of Sales-Related Compensation, and explicitly excludes the following five types of compensation from the definition:

- (1) Soft dollars (as defined in Section 28(e) of the Securities Exchange Act of 1934);
- (2) Reasonable and customary fees for custodial or similar administrative services if the fee or amount of the fee is not determined based on the amount or value of the transaction;
- (3) Non-monetary benefits provided by another service provider, including a custodian, that benefit the CFP® professional's Clients by improving the CFP® professional's delivery of Professional Services, and that are not determined based on the amount or value of Client transactions;
- (4) Reasonable and customary fees for Professional Services, other than for solicitations and referrals, the CFP® professional or CFP® Professional's Firm provides to a Client that are collected and distributed by another service provider, including under a Turnkey Asset Management Platform; and
- (5) A Related Party's receipt of solicitor's fees for soliciting clients for the CFP® professional or the CFP® Professional's Firm.

There are important policy reasons for each of these exclusions:

- Soft dollars enable a CFP® professional to receive valuable research services that improve the delivery of Professional Services to Clients.
- There may be circumstances in which compensation is received by a CFP® professional or a Related Party for custodial or administrative services. Those fees should not constitute Sales-Related Compensation so long as they are not determined based on the amount or value of the transaction.
- Benefits provided by another service provider, which would constitute a referral fee, are excluded from the definition of Sales-Related Compensation so long as three important limitations are in place. First, the benefits must be non-monetary because the payment of cash offers an unacceptable potential for abuse. Second, the benefits received by a CFP® professional must also benefit the Client by improving the CFP® professional's delivery of Professional Services in order to be excluded from the definition of Sales-Related Compensation. Third, the benefits may not be disguised commissions for product sales. Therefore, those benefits that are based on the amount or value of Client transactions are not excluded from the Sales-Related Compensation definition.
- Fees for the CFP® professional's services - unless they are for solicitations or referrals - should not constitute Sales-Related Compensation simply because they are collected by another service provider.
- Many CFP® professionals utilize solicitors for client development. A Related-Party solicitor's receipt of Sales-Related Compensation from the CFP® professional or CFP® Professional's Firm should not prevent the CFP® professional from referring to his or her compensation method as fee-only.

Some commenters recommended excluding several other types of compensation, including insurance commissions, 12b-1 fees, and trailing commissions. CFP Board does not agree to exclude those compensation categories, as they provide an incentive for a CFP® professional to promote sales of certain kinds of products, and thus properly are treated as Sales-Related Compensation.

Others commented that a CFP® professional transitioning to a fee-only practice should be able to refer to his or her compensation method as fee-only while continuing to earn trailing commissions because that might more effectively promote continued product service. However, trailing commissions offer an economic incentive to retain the product, which is the type of incentive the definition of Sales-Related Compensation is designed to capture. A CFP® professional who terminates trailing commissions may continue to provide Financial Advice on those products, or refer the Client to a professional who may serve as the broker-of-record or agent-of-record on the product. Therefore, CFP Board determined that the better approach is for these CFP® professionals to wait until they no longer are receiving trails before referring to their compensation method as fee-only.

A commenter also suggested that CFP Board include in the compensation-representation standard a requirement to notify Clients of changes in their compensation status. The concern underlying that comment applies to all representations, and thus is subject to the Integrity standard, which requires a CFP® professional to provide material facts that are necessary to make prior statements not misleading.

**Related Party:** The *Code and Standards* considers the compensation that a Related Party receives in determining whether a CFP® professional may refer to his or her compensation method as fee-only. Related Party compensation is relevant because of the potential influence on a CFP® professional's recommendations.

The *Code and Standards* defines a Related Party as a "person or business entity (including a trust) whose receipt of Sales-Related Compensation a reasonable CFP® professional would view as directly or indirectly benefiting the CFP® professional or the CFP® Professional's Firm, including, for example, as a result of the CFP® professional's ownership stake in the business entity." Family members and controlled business entities are presumed to be Related Parties, but a CFP® professional may present facts showing that a reasonable CFP® professional would not consider a particular family member or business entity's receipt of compensation to benefit the CFP® professional or the CFP® Professional's Firm.

**In Connection with any Professional Services:** The *Code and Standards* introduces a new limitation on the relevance of a Related-Party's Sales-Related Compensation to a CFP® professional's representation of compensation method. The standard provides that CFP Board will consider such compensation only if it is "in connection with any Professional Services the CFP® professional or CFP® Professional's Firm provides to Clients." This connection exists when the compensation results, directly or indirectly, from Client transactions referred (or facilitated) by the CFP® professional or the CFP® Professional's Firm. The standard includes a safe harbor for CFP® professionals (and their firms) who adopt and implement policies and procedures designed to prevent recommendations that a Client purchase Financial Assets from or through, or refer any Clients to, a Related Party.

**Misrepresentation by a CFP® Professional's Firm:** The standard addresses the situation where a CFP® Professional's Firm is making compensation representations that are inconsistent with CFP Board's *Code and Standards*. If the CFP® professional Controls the firm, then the CFP® professional must not allow the firm to make a representation of compensation method that would be false or misleading if made by the CFP® professional. If the CFP® professional does not Control the firm, then the CFP® professional does not have an obligation to prevent the firm from making a false or misleading misrepresentation of compensation method. The CFP® professional instead will be required to correct any misrepresentation of compensation method by accurately representing the CFP® professional's compensation method to the CFP® professional's Clients.

### **A13: DUTIES WHEN RECOMMENDING, ENGAGING, AND WORKING WITH ADDITIONAL PERSONS**

The *Code and Standards* sets forth a new standard for when a CFP® professional recommends, engages, and works with additional persons. The standard creates different obligations depending on whether the CFP® professional is engaging or recommending the selection or retention of another financial or Professional Services provider or is already working with another financial or Professional Services provider. When the CFP® professional is engaging or recommending the selection or retention of another financial or Professional Services provider, the CFP® professional must:

1. Have a reasonable basis for the recommendation or Engagement based on the person's reputation, experience and qualifications;
2. Disclose to the Client, at the time of the recommendation or prior to the Engagement, any arrangement by which someone who is not the Client will compensate or provide some other material economic benefit to the CFP® professional, the CFP® Professional's Firm, or a Related Party for the recommendation or Engagement; and

3. When engaging a person to provide services for a Client, exercise reasonable care to protect the Client's interests.

When working with another financial or Professional Services provider on behalf of the Client, the CFP® professional must:

1. Communicate with the other provider about the scope of their respective services and the allocation of responsibility between them; and
2. Inform the Client in a timely manner if the CFP® professional has a reasonable belief that the other provider's services were not performed in accordance with the scope of services to be provided and the allocation of responsibilities.

#### **A14: DUTIES WHEN SELECTING, USING, AND RECOMMENDING TECHNOLOGY**

CFP Board's current *Standards* do not explicitly address the use of technology. In view of the growing use of technology, including digital advice tools, in the financial planning profession, the *Code and Standards* provides a new, principles-based standard setting forth duties when selecting, using, and recommending technology. The duties are as follows:

1. A CFP® professional must exercise reasonable care and judgment when selecting, using, or recommending any software, digital advice tool, or other technology while providing Professional Services to a Client.
2. A CFP® professional must have a reasonable level of understanding of the assumptions and outcomes of the technology employed.
3. A CFP® professional must have a reasonable basis for believing that the technology produces reliable, objective, and appropriate outcomes.

Approval of the technology by a CFP® Professional's Firm is a factor that CFP Board will consider in determining the reasonableness of a CFP® professional's care when using technology.

#### **A15: REFRAIN FROM BORROWING OR LENDING MONEY AND COMMINGLING FINANCIAL ASSETS**

The *Code and Standards* retains the current standards governing the borrowing and lending of money and commingling of Financial Assets, with minor revision, for example, to make the ban on commingling absolute. The borrowing and lending standard also prohibits indirect borrowing and lending. This means, for example, a CFP® professional may not borrow money from a Client through another entity or individual.

### **III. FINANCIAL PLANNING AND THE APPLICATION OF THE PRACTICE STANDARDS FOR THE FINANCIAL PLANNING PROCESS**

#### **B1: FINANCIAL PLANNING DEFINITION**

One of CFP Board's goals in revising the *Standards* was to develop a shorter Financial Planning definition that provides greater accessibility to the public without sacrificing clarity. The *Code and Standards* sets forth a new Financial Planning definition that consists of thirty carefully chosen words, discussed below.

- **"Financial Planning is a collaborative process:"** CFP Board is committed to the fundamental principle that Financial Planning is a process, not a document or product. The process is set forth in the *Practice Standards*. Collaboration between the CFP® professional and the Client, and potentially others, is critical to the process.
- **"That helps:"** Financial Planning is not merely designed to help. Financial Planning does help. These two words make a strong statement that recognizes the value of Financial Planning, without equivocation.
- **"Maximize a Client's potential:"** The goal is for each Client to maximize his or her potential. Financial Planning does not guarantee a particular result, but it does help maximize a Client's potential. In developing the definition, CFP Board carefully considered a long list of alternatives to "maximize," including achieve, advance, enhance, foster, further, improve, increase, optimize, realize, and support. CFP Board determined that maximize is the word that best fits the definition because the goal of a CFP® professional providing Financial Planning is to make the most out of the Client's potential.

Other terms come close to capturing that meaning, but fall short. Achieve and realize are more precise modifiers for goals than the potential to meet goals. Foster might be appropriate, but only if the second or third-level definition were to apply. Optimize implies perfection, which does not capture the intended meaning. Other terms, such as advance, enhance, further, improve, increase, and support, are too weak because just getting better is not a sufficiently high standard. CFP Board also does not agree that “maximize” is promissory given the context in which the word is used. Maximize is qualified by “helps” and modifies a client’s “potential,” not any specific financial performance.

- **“For meeting life goals:”** The purpose of Financial Planning is to develop and meet goals. Defining the goals as “financial goals” would be too narrow. The goal of each Client is to obtain what they want in life. Financial goals are a means to that end, not the end itself. The definition’s reference to “life goals” also does not imply that a CFP® professional must provide life planning. A CFP® professional provides Financial Advice, not life advice. Moreover, a CFP® professional does not need to engage in life planning to determine a Client’s life goals.
- **“Through Financial Advice:”** Financial Advice is the financial planner’s tool. While a financial planner is focused on life goals, the advice that a financial planner provides is Financial Advice.
- **“That integrates relevant elements of the Client’s personal and financial circumstances.”** Integration is essential to Financial Planning. A financial planner examines a Client’s circumstances and evaluates how one element of the Client’s life affects other elements of a Client’s life. Relevant elements vary from Client to Client.

Several commenters found the Financial Planning definition to be crisp, clear, and accurate. Eighty-five percent of the CFP® professionals who responded to a survey conducted by CFP Board either “strongly agreed” or “agreed” with the revised Financial Planning definition.

A few commenters suggested that the distinction between Financial Planning and Financial Advice is not clear, and that the definition of Financial Planning is so broad that all investment advice would meet the definition. CFP Board does not agree. The *Code and Standards* sets forth separate definitions for Financial Advice and Financial Planning. The scope of the former is much broader than the scope of the latter, and the *Code and Standards* elsewhere confirms this construct, both by stating that a CFP® professional provides Financial Planning “through” Financial Advice, and by providing factors that CFP Board will weigh in determining whether Financial Advice requires Financial Planning.

Several commenters also suggested that the definition of Financial Planning is equivalent to FINRA’s Know Your Customer obligation. CFP Board does not agree. The Know Your Customer rule calls for collecting certain types of information about a Client. The definition of Financial Planning sets forth the meaning of Financial Planning and CFP Board’s integration factors set forth the circumstances in which a CFP® professional must provide Financial Planning. A CFP® professional is not required to provide Financial Planning merely because he or she collected the information required by the Know Your Customer obligation.

One commenter also suggested that the breadth of the definition of Financial Planning would limit Client choice when choosing an advisor, and that a CFP® professional would be forced to provide Financial Planning to Clients even if the Client did not want Financial Planning. That is incorrect. The *Code and Standards* contains a section entitled “No Client Agreement to Engage for Financial Planning” that addresses the options when a CFP® professional is required to provide Financial Planning to a Client, but the Client does not want Financial Planning. This standard specifically allows the CFP® professional to provide the requested services after making disclosures regarding the benefits of Financial Planning and limitations on the CFP® professional’s Financial Advice.

Another commenter suggested that CFP Board add “with the economic and legal environment” to the end of the definition of Financial Planning. CFP Board agrees that a CFP® professional providing Financial Planning must consider the economic and legal environment, but determined that the requirement to provide Financial Advice sufficiently addresses that obligation.

## **B2: EXAMPLES OF RELEVANT ELEMENTS OF THE CLIENT’S PERSONAL AND FINANCIAL CIRCUMSTANCES**

The *Code and Standards* does not define “relevant elements” because those words offer appropriate precision: what is “relevant” to each Client depends on his or her personal and financial circumstances. Instead, the *Code and Standards* provides examples of relevant elements. The examples focus on what the Client needs or wants,

which is a slight departure from the current *Standards*, which reference (in the “Financial Planning Subject Areas”) the services a CFP® professional provides. CFP Board made this change to shift the focus from the categories or services to an integration of the Client’s needs and wants.

### **B3: APPLICATION OF PRACTICE STANDARDS**

This standard addresses when a CFP® professional must comply with the *Practice Standards*. Most of the other standards, including the fiduciary duty that applies when providing Financial Advice, apply even when the *Practice Standards* do not.

CFP Board originally developed *Practice Standards* for the Financial Planning process over a four-year period from 1998-2001. The *Standards* currently in effect provides that the Financial Planning process set forth in the *Practice Standards* is required when a CFP® professional is providing Financial Planning or material elements of Financial Planning. In the *Code and Standards*, CFP Board has identified three circumstances in which the Financial Planning process set forth in the *Practice Standards* is required:

- (1) When the CFP® professional agrees to provide or provides Financial Planning;
- (2) When the CFP® professional agrees to provide or provides Financial Advice that requires integration of relevant elements of the Client’s personal and/or financial circumstances in order to act in the Client’s best interests; and
- (3) When the Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning.

The first circumstance occurs when a CFP® professional and a Client explicitly agree that the CFP® professional will provide, or the CFP® professional actually provides, Financial Planning. This includes circumstances where a CFP® professional and the Client enter into an agreement for Financial Planning or when the CFP® professional provides a Client a document titled a financial plan.

The second circumstance occurs when a CFP® professional provides Financial Advice to a Client, but there is no explicit agreement or understanding between the CFP® professional and Client to provide Financial Planning. Rather, the nature of the Financial Advice requires the CFP® professional to provide Financial Planning to meet his or her fiduciary obligations. While this circumstance is similar to the concept of “material elements of financial planning,” this standard examines the potential effect of the Financial Advice on the Client rather than the types of services the CFP® professional provides to the Client.

The third circumstance occurs when a Client has a reasonable belief that the CFP® professional will provide or has provided Financial Planning. While the current *Standards* examines the Client’s subjective understanding and intent in engaging the CFP® professional as one relevant factor in determining whether Financial Planning is required, the *Code and Standards* provides an objective standard that is sufficient on its own to require Financial Planning, if satisfied. Whether the CFP® professional has held out to the Client that he or she is a CFP® professional is one of many factors to be considered in assessing whether a Client’s belief is reasonable.

Several commenters urged CFP Board to specifically state that a CFP® professional is not providing Financial Planning services to a Client when the CFP® professional makes a recommendation after obtaining relevant personal and investment-related information from the Client, as required by FINRA’s Know Your Customer and suitability rules. CFP Board agrees that the mere act of collecting information under FINRA’s Know Your Customer and suitability rules would not constitute Financial Planning. CFP Board does not agree that a CFP® professional who makes a recommendation as a registered representative of a broker-dealer never would be required to provide Financial Planning. It is not the regulatory scheme under which a CFP® professional operates that determines whether a CFP® professional is required to provide Financial Planning to a Client. Instead, the *Code and Standards* expressly delineates five factors – set forth below – for determining whether Financial Planning is required.

### **B4: INTEGRATION FACTORS**

The *Code and Standards* updates the factors CFP Board will weigh in determining whether Financial Planning is required. The new factors focus on the advice’s effect (or potential effect) on the Client. Two of the current factors – the “Client’s understanding and intent in engaging the CFP® professional” and the comprehensiveness of the CFP® professional’s data gathering – no longer apply because a Client’s understanding, if objectively reasonable, now is sufficient to require Financial Planning, and the work that the CFP® professional performs

does not help determine the advice's effect on the Client. Another factor – the “degree to which multiple financial planning subject areas are involved” – has been modified to assume a Client-centric focus through an examination of the relevant elements of the Client's circumstances. The final current factor – the “breadth and depth of the recommendations” – has been significantly expanded. The result is the following five-factor list:

1. *The number of relevant elements of the Client's personal and financial circumstances that the Financial Advice may affect.*

This factor requires a CFP® professional to review the Financial Advice the CFP® professional will provide to the Client and determine how many of the Client's needs or wants the Financial Advice may affect. Some commenters recommended that CFP Board remove this factor because a CFP® professional may be required to provide Financial Planning when addressing just one relevant element. While CFP Board agrees that Financial Advice concerning one relevant element of the Client's personal and financial circumstances may be sufficient to require Financial Planning, that neither lessens the significance of multiple relevant elements, nor precludes a finding that Financial Planning is required based upon a weighing of all factors when the Financial Advice affects one relevant element.

2. *The portion and amount of the Client's Financial Assets that the Financial Advice may affect.*

This factor requires a CFP® professional to review the Financial Advice the CFP® professional will provide to the Client and determine the portion and amount of the Client's Financial Assets the Financial Advice may affect. This factor is often part of the analysis of the current breadth and depth of the recommendation factor under the current *Standards*. Some commenters offered that Financial Advice may affect something other than Financial Assets or have a significant effect on a small portion of Financial Assets. Those comments, while true, prompted no change because the factor focuses on both the portion and amount of Financial Assets, and the effect on Financial Assets is but one factor that CFP Board would weigh in conjunction with others.

3. *The length of time the Client's personal and financial circumstances may be affected by the Financial Advice.*

This factor requires the CFP® professional to assess the length of time the Financial Advice may affect the Client's personal and financial circumstances. This factor is often part of the analysis of the current breadth and depth of the recommendations factor under the current *Standards*.

4. *The effect on the Client's overall exposure to risk if the Client implements the Financial Advice.*

This factor requires the CFP® professional to assess the Client's exposure to risk – including investment risk, interest rate risk, and inflation risk – if the Client implements the Financial Advice. This factor is often part of the analysis of the current breadth and depth of the recommendations factor under the current *Standards*.

5. *The barriers to modifying the actions taken to implement the Financial Advice.*

This factor requires the CFP® professional to assess how difficult it would be for the Client to unwind or modify the action taken to implement the Financial Advice. This factor is often part of the analysis of the breadth and depth of the current recommendations factor under the current *Standards*.

## **B5: CFP BOARD EVALUATION**

The *Code and Standards* includes a new standard that applies when a CFP® professional is involved in a disciplinary proceeding and denies the allegation that the CFP® professional was required to comply with the *Practice Standards*. In that circumstance, the CFP® professional must demonstrate that compliance with the *Practice Standards* was not required. This standard reflects the understanding that the CFP® professional is in the best position to offer that explanation.

Several commenters wanted CFP Board to go further and adopt a rebuttable presumption that a CFP® professional is providing Financial Planning to a Client unless the CFP® professional can demonstrate otherwise. However, a Client's reasonable expectations regarding the type of services provided to a client are addressed in other sections of the *Code and Standards*, including the “Provide Information to a Client” standard (which requires a CFP® professional to provide the Client with a description of the services and products to be provided) and the “Application of the *Practice Standards*” section (which requires a CFP® professional to comply with the *Practice Standards* when the Client has a reasonable basis to believe the CFP® professional will provide or has provided Financial Planning).

## **B6: NO CLIENT AGREEMENT TO ENGAGE FOR FINANCIAL PLANNING**

The *Code and Standards* includes a new standard that applies when a CFP® professional is required to comply with the *Practice Standards*, but the Client does not agree to engage the CFP® professional to provide Financial Planning. CFP Board recognizes that a CFP® professional should be able to provide services to a Client who does not agree to engage the CFP® professional for Financial Planning, even if the Client's best interests would be served through Financial Planning. Thus, this standard provides that when a CFP® professional is required to comply with the *Practice Standards*, but the Client does not agree to engage the CFP® professional to provide Financial Planning, a CFP® professional must either:

- (a) Elect not to enter into the Engagement;
- (b) Limit the Scope of Engagement to services that do not require application of the *Practice Standards*, and describe to the Client the services the Client requests that the CFP® professional will not perform;
- (c) Provide the requested services after informing the Client how Financial Planning would benefit the Client and how the decision not to engage the CFP® professional to provide Financial Planning may limit the CFP® professional's Financial Advice, in which case the CFP® professional is not required to comply with the *Practice Standards*; or
- (d) Terminate the Engagement.

To illustrate the second and third options, assume that a Client seeks Financial Advice on topics 1, 2, and 3 that would require Financial Planning, but the Client refuses to engage the CFP® professional for Financial Planning. Under the second option, the CFP® professional may limit the Scope of the Engagement to Financial Advice topic 1 if that would not require Financial Planning and inform the Client that the CFP® professional will not be providing Financial Advice on topics 2 and 3. Under the third option, if the CFP® professional informs the Client how Financial Planning would benefit the Client and how the decision not to engage the CFP® professional to provide Financial Planning may limit the CFP® professional's Financial Advice, the CFP® professional may provide Financial Advice on topics 1, 2, and 3 without being required to comply with the *Practice Standards*.

Some commenters stated that CFP Board should not require a CFP® professional to inform the Client how the decision not to receive Financial Planning may constrain the Financial Advice, because that may have a negative effect on the Client relationship. CFP Board determined this concern was mitigated by requiring the disclosure only when the CFP® professional provides the requested services, as that is when the effect of not providing Financial Planning is most acute, and by requiring a CFP® professional to inform the Client of both the benefits of Financial Planning and the consequences of not receiving Financial Planning (the potential limits on the CFP® professional's Financial Advice).

## **IV. PRACTICE STANDARDS FOR THE FINANCIAL PLANNING PROCESS**

CFP Board's original development of *Practice Standards* for the Financial Planning process established norms for the delivery of Financial Planning, advanced professionalism in Financial Planning, and enhanced the value of the Financial Planning process. Since that time, the *Practice Standards* have gained widespread acceptance in the Financial Planning profession, with the result that the *Practice Standards* no longer need some of the material that accompanies the original standards, including the introductory sections that appear before the *Practice Standards* and the supplementary sections that appear after each Practice Standard. Therefore, these have been removed from the *Practice Standards* in the *Code and Standards*.

The revised *Practice Standards* provides greater clarity by offering more detailed requirements for the Financial Planning process. The *Code and Standards* also makes other important structural refinements. The "Scope of the Engagement" standard that originally served as the first step in the Financial Planning process now is captured elsewhere in the *Code and Standards*, with the result that the Financial Planning process solely addresses the delivery of Financial Planning. The *Code and Standards* also requires a CFP® professional to work with the Client to mutually define the Client's goals after obtaining information and assessing the Client's personal and financial circumstances, and not before, as the *Practice Standards* currently require. This revised ordering recognizes that a CFP® professional must understand the Client's circumstances to collaborate effectively with the Client to identify and then select goals. CFP Board also separated developing recommendations and presenting recommendations into distinct steps, to more clearly reflect their differences and the importance of each to the Financial Planning process.

Below is a chart summarizing the changes to the *Practice Standards*:

CURRENT PRACTICE STANDARDS	REVISED PRACTICE STANDARDS
<b>1. Establishing and Defining the Relationship with the Client</b> <ul style="list-style-type: none"> <li>Defining the Scope of the Engagement</li> </ul>	[Moved to section A.10 (Provide Information to a Client)]
<b>2. Gathering Client Data</b> <ul style="list-style-type: none"> <li>Determining a Client's Personal and Financial Goals, Needs and Priorities</li> <li>Obtaining Quantitative Information and Documents</li> </ul>	<b>1. Understanding the Client's Personal and Financial Circumstances</b> <ul style="list-style-type: none"> <li>Obtaining Qualitative and Quantitative Information</li> <li>Analyzing Information</li> <li>Addressing Incomplete Information</li> </ul> <b>2. Identifying and Selecting Goals</b> <ul style="list-style-type: none"> <li>Identifying Potential Goals</li> <li>Selecting and Prioritizing Goals</li> </ul>
<b>3. Analyzing and Evaluating the Client's Financial Status</b> <ul style="list-style-type: none"> <li>Analyzing and Evaluation the Client's Information</li> </ul>	<b>3. Analyzing the Client's Current Course of Action and Potential Alternative Course(s) of Action</b> <ul style="list-style-type: none"> <li>Analyzing Current Course of Action</li> <li>Analyzing Potential Alternative Courses of Action</li> </ul>
<b>4. Developing and Presenting the Financial Planning Recommendations</b> <ul style="list-style-type: none"> <li>Identifying and Evaluating Financial Planning Alternative(s)</li> </ul>	
<b>4. Developing and Presenting Financial Planning Recommendations</b> <ul style="list-style-type: none"> <li>Developing the Financial Planning Recommendation(s)</li> </ul>	<b>4. Developing the Financial Planning Recommendation(s)</b>
<b>4. Developing and Presenting Financial Planning Recommendations</b> <ul style="list-style-type: none"> <li>Presenting the Financial Planning Recommendation(s)</li> </ul>	<b>5. Presenting the Financial Planning Recommendation(s)</b>
<b>5. Implementing the Financial Planning Recommendations</b> <ul style="list-style-type: none"> <li>Agreeing on Implementation Responsibilities</li> <li>Selecting Products and Services for Implementation</li> </ul>	<b>6. Implementing the Financial Planning Recommendation(s)</b> <ul style="list-style-type: none"> <li>Addressing Implementation Responsibilities</li> <li>Identifying, Analyzing, and Selecting Actions, Products and Services</li> <li>Recommending Actions, Products and Services for Implementation</li> <li>Selecting and Implementing Actions, Products or Services</li> </ul>
<b>6. Monitoring</b> <ul style="list-style-type: none"> <li>Defining Monitoring Responsibilities</li> </ul>	<b>7. Monitoring Progress and Updating</b> <ul style="list-style-type: none"> <li>Monitoring and Updating Responsibilities</li> <li>Monitoring the Client's Progress</li> <li>Obtaining Current Qualitative and Quantitative Information</li> <li>Updating Goals, Recommendations or Implementation Decisions</li> </ul>

The updated *Practice Standards* is specific, comprehensive, and reflects the modern practice of Financial Planning. In a survey of CFP® professionals, eighty-three percent of those who responded agreed that the revised *Practice Standards* effectively capture the Financial Planning process.

**Documentation Requirement:** The *Code and Standards* adds a principles-based documentation standard that applies when a CFP® professional is required to provide Financial Planning. The documentation standard requires a CFP® professional to act prudently in documenting information as the facts and circumstances require, and expressly takes into account the policies and procedures of the CFP® Professional's Firm. Because this is an objective, principles-based standard, the application of which depends on the facts and circumstances, CFP Board elected not to provide specific standards for how a CFP® professional must document the information, or where a CFP® professional must maintain the information, because a CFP® professional may have several appropriate options available.

### **Step 1: Understanding the Client's Personal and Financial Circumstances**

The first step in the Financial Planning process is to understand the Client's personal and financial circumstances. A CFP® professional satisfies this standard by obtaining qualitative (subjective) and quantitative (objective) information, analyzing the information, and addressing any incomplete information. The *Code and Standards* presents broadly written examples of qualitative and quantitative information that a CFP® professional must collaborate with the Client to obtain. Not all will apply to each Client, which is why the *Code and Standards* describes them as examples, not requirements. The examples of qualitative and quantitative information reflect the order in which they are likely to arise in an Engagement.

### **Step 2: Identifying and Selecting Goals**

The second step in the Financial Planning process is to identify and select goals. This ordering reflects that a CFP® professional is unable to identify and select goals until after the CFP® professional understands the Client's personal and financial circumstances. The standard requires a CFP® professional to discuss with the Client the CFP® professional's assessment of the Client's financial and personal circumstances and to help the Client identify goals, including by discussing and applying reasonable assumptions and estimates. The *Code and Standards* also provides that the requirement is to identify potential goals, and to both select and prioritize goals.

### **Step 3: Analyzing the Client's Current Course of Action and Potential Alternative Course(s) of Action**

The next step is to analyze the Client's current course of action and potential recommendations. The requirement to analyze the current course of action is new, and reflects the possibility that no adjustments to the Client's current course of action may be necessary. A CFP® professional will be required to determine whether the current course maximizes the potential for meeting the Client's goals, and where appropriate, analyze one or more potential alternative courses of action against the same standard. A potential alternative course of action does not become a recommendation until the CFP® professional selects it as a recommendation in step 4 of the process.

### **Step 4: Developing the Financial Planning Recommendation(s)**

A CFP® professional then develops the financial planning recommendation(s) by selecting, from among the potential alternative courses of action, one or more recommendation(s) designed to maximize the potential for meeting the Client's goals. For each recommendation, the CFP® professional will be required to consider the assumptions and estimates used in developing the recommendation, the basis for making the recommendation (including specific factors set forth in the standard), the timing and priority of the recommendation, and whether the recommendation is independent or must be implemented with one or more other recommendations. Some commenters requested that CFP Board combine the development and presentation of the recommendation, as set forth in the current *Standards*, to maintain continuity of the six-step process. While CFP Board appreciates this historical perspective, CFP Board disagrees. CFP Board is focused on identifying the appropriate steps in the process, not on retaining a specific number of steps, and has determined that developing and presenting the recommendation are distinct steps that occur at different times and sometimes by different individuals. Indeed, the person who develops the recommendation may not be the same person who presents the recommendation to the Client. As technology's role in developing Financial Planning recommendations increases, the distinction of these steps will be more pronounced. Further, there have been other substantial changes to the *Practice Standards* that render adherence to a six-step process unnecessary.

## **Step 5: Presenting the Financial Planning Recommendation(s)**

The next step requires the CFP® professional to present the recommendation(s) to the Client and discuss with the Client the information that was required to be considered when developing the recommendation(s). Several commenters urged CFP Board to require a CFP® professional to deliver a written financial plan or identify the required elements of a financial plan. CFP Board disagrees. Not all plans must be in writing, nor must they all have the same elements. The better course is for a CFP® professional to exercise professional judgment in determining how best to present Financial Planning recommendations to Clients.

## **Step 6: Implementing the Financial Planning Recommendation(s)**

The sixth step sets forth the requirements when implementing the Financial Planning recommendation(s), including (a) addressing implementation responsibilities, (b) identifying, analyzing, and selecting actions, products and services, (c) recommending actions, products and services for implementation, and (d) selecting and implementing actions. Among other requirements, a CFP® professional who has implementation responsibilities will be required to identify and analyze actions, products, and services designed to implement the recommendations. The CFP® professional will be required to consider the basis for each selection, which must include how the action, product, or service is designed to implement the CFP® professional's recommendation, and the advantages and disadvantages of the action, product, or service relative to reasonably available alternatives.

## **Step 7: Monitoring Progress and Updating**

The Monitoring Progress and Updating standard, which is almost entirely new, requires a CFP® professional to (a) address monitoring and updating responsibilities (including by communicating very specific information to the Client concerning the scope of the respective responsibilities), (b) monitor the Client's progress, (c) obtain current qualitative and quantitative information, and (d) update goals, recommendations, or implementation decisions. The standard makes clear that several of the requirements apply only when the CFP® professional has monitoring or updating responsibilities.

## **V. DUTIES OWED TO FIRMS AND SUBORDINATES**

The *Code and Standards* also sets forth duties a CFP® professional owes to the CFP® Professional's Firm and to subordinates.

### **D1: USE REASONABLE CARE WHEN SUPERVISING**

The standard governing a CFP® professional's supervisory responsibility accounts for the myriad ways in which supervisory responsibilities may arise. The objective standard requires a CFP® professional to use reasonable care when supervising subordinates, with a view toward preventing violations of applicable law, rules, regulations, and the *Code and Standards*.

### **D2: COMPLY WITH LAWFUL OBJECTIVES OF CFP® PROFESSIONAL'S FIRM**

CFP Board's current *Standards* require a CFP® professional to comply with the firm's policies and procedures. The *Code and Standards* retains that standard and makes clear that a CFP® professional will not be subject to discipline by CFP Board for failing to comply with a firm policy that violates CFP Board's *Code and Standards*.

### **D3: PROVIDE NOTICE OF PUBLIC DISCIPLINE**

The *Code and Standards* also retains the requirement to notify the CFP® Professional's Firm of CFP Board discipline. While the current *Standards* limit that obligation to suspensions and revocations, the *Code and Standards* extends the requirement to all public discipline and requires prompt notification.

## **VI. DUTIES OWED TO CFP BOARD**

### **E1: DEFINITIONS**

### **E2: REFRAIN FROM ADVERSE CONDUCT**

### **E3: REPORTING**

### **E4: PROVIDE NARRATIVE STATEMENT**

### **E5: COOPERATION**

### **E6: COMPLIANCE WITH TERMS AND CONDITIONS OF CERTIFICATION AND LICENSE**

The current *Rules of Conduct* states that a CFP® professional “shall not engage in conduct which reflects adversely on his or her integrity or fitness as a certificant, upon the CFP® marks, or upon the profession.” Over time, CFP Board’s Disciplinary and Ethics Commission has identified conduct that violates this standard, such as a personal bankruptcy. The *Code and Standards* retains this principles-based standard and identifies specific examples of conduct that violates the standard.

The *Code and Standards* makes a significant change to CFP Board’s bankruptcy procedures. Prior to July 2012, all CFP® professionals who sought and received bankruptcy protection were required to go through CFP Board’s disciplinary process. Beginning in July 2012, pursuant to the Bankruptcy Disclosure Procedures, when CFP Board learned about a CFP® professional’s first bankruptcy, CFP Board began disclosing the bankruptcy to the public through a note on CFP Board’s website and in a press release. While this did not result in a formal disciplinary action, the effect is similar to a public letter of admonition. CFP Board recognizes that in certain limited circumstances, a bankruptcy does not demonstrate a CFP® professional’s inability to manage his or her finances. Therefore, the *Code and Standards* restores the right of a CFP® professional who has filed for bankruptcy to demonstrate to the Disciplinary and Ethics Commission that the bankruptcy was not the result of an inability to responsibly manage the CFP® professional’s financial affairs.

The *Code and Standards* also requires a CFP® professional to report to CFP Board, within thirty days, conduct that violates the standard, and then to provide a narrative statement about the reported matter and cooperate with CFP Board in any investigation. The expanded reporting standard addresses, among other things, criminal convictions, professional discipline, customer-related complaints, arbitrations and civil litigation, regulatory investigations, bankruptcies and tax liens. As such it conforms to the reporting requirements set forth in Form U4 (Uniform Application for Securities Industry Registration or Transfer) without fully adopting Form U4’s comprehensiveness and complexity. The reporting requirement also enables CFP Board to receive information in a timely manner and eliminates any confusion about the reporting timeline.

## **VII. PROHIBITION ON CIRCUMVENTION**

The *Code and Standards* adds language stating that “A CFP® professional may not do indirectly, or through or by another person or entity, any act or thing that the *Code and Standards* prohibits the CFP® professional from doing directly.” This standard tracks the prohibition set forth in Section 208(d) of the Advisers Act (“It shall be unlawful for any person indirectly, or through or by any other person, to do any act or thing which it would be unlawful for such person to do directly under the provisions of this subchapter or any rule or regulation thereunder.”). This approach also is consistent with how CFP Board has interpreted the current *Standards*.

## **VIII. GLOSSARY**

Some of the defined terms are discussed either above or below.

**CFP® Professional’s Firm:** The definition of a CFP® Professional’s Firm makes clear that the entity must have the authority to exercise Control over the CFP® professional’s activities. The CFP® Professional’s employer, broker-dealer, registered investment adviser, insurance company, and insurance agency are specifically identified as entities that meet the definition.

**Conflict of Interest:** The Conflict of Interest definition includes the following two different types of circumstances: (a) when a CFP® professional's interests (including the interests of the CFP® Professional's Firm) are adverse to the CFP® professional's duties to a Client; or (b) when a CFP® professional has duties to one Client that are adverse to another Client. One commenter was concerned that subsection (b) imposes on a CFP® professional a duty to monitor the accounts of all Clients, and would expose a CFP® professional to liability if he or she recommended a security to one Client but discouraged a different Client from purchasing the same security. CFP Board disagrees. For there to be a conflict, the duties must be adverse. Moreover, an investment that is in the best interests of one Client may not be in the best interests of another Client whose circumstances and needs differ.

**Engagement:** The definition of Engagement is a "written or oral agreement, arrangement, or understanding." A few commenters suggested that an Engagement may not be oral and may not occur unless there is compensation. CFP Board does not agree with that perspective. Other analogous professions, such as attorneys, do not apply that limitation. A CFP® professional rendering Financial Advice pursuant to an oral agreement, arrangement, or understanding must act as fiduciary when providing that advice, regardless of whether the CFP® professional is compensated for the advice or the engagement was reduced to writing. As one commenter noted, harm may result from Financial Advice provided in violation of fiduciary standards, even if money does not change hands. Therefore, CFP Board intends for the fiduciary duty to apply when Financial Advice is being provided to pro bono clients, and when a CFP® professional provides a financial plan for no charge (which sometimes occurs when a CFP® professional is seeking to secure compensation during implementation). General principles of contract law will inform the inquiry.

**Family:** The *Code and Standards* defines a Family member to include a grandparent, parent, stepparent, father-in-law/mother-in-law, uncle/aunt, spouse, former spouse, spousal equivalent, domestic partner, brother/sister, stepsibling, brother-in-law/sister-in-law, cousin, son/daughter, stepchild, son-in-law/daughter-in-law, nephew/niece, grandchild, and any other person the CFP® professional, directly or indirectly, supports financially to a material extent.

**Financial Advice:** The *Code and Standards* sets forth a comprehensive definition of Financial Advice that includes two components. First is "communication that, based on its content, context, and presentation, would reasonably be viewed as a recommendation that the Client take or refrain from taking a particular course of action with respect to" four categories of subjects:

1. The development or implementation of a financial plan;
2. The value of or the advisability of investing in, purchasing, holding, gifting, or selling Financial Assets;
3. Investment policies or strategies, portfolio composition, the management of Financial Assets, or other financial matters; or
4. The selection and retention of other persons to provide financial or Professional Services to the Client.

The second component is the "exercise of discretionary authority over the Financial Assets of a Client." The definition of Financial Advice excludes marketing materials, general education materials, and general financial communications that reasonably would not be viewed as Financial Advice. For this evaluation, the definition uses the lens of a reasonable CFP® professional, to enable members of the Disciplinary and Ethics Commission (most of whom are CFP® professionals themselves) to make that determination. By focusing on the viewpoint of a "reasonable CFP® professional," an objective standard will determine whether a particular communication constitutes Financial Advice, and not the subjective viewpoint of the CFP® professional who provided the materials.

A commenter requested that CFP Board modify the definition of Financial Advice to distinguish between Financial Planning and implementation, which the commenter considers to be "two distinct and separate types of services" and two "separate disciplines." CFP Board disagrees. As the practice standards make clear, implementation is a distinct step of the Financial Planning process. Moreover, CFP Board is opposed to the "hat switching" that this proposed distinction would endorse. The same commenter would exclude investment policies from the definition of Financial Advice. However, a recommendation that a Client take or refrain from taking a course of action with respect to an investment policy does constitute Financial Advice, and is properly included in the definition.

**Financial Assets:** The definition of Financial Assets is “[s]ecurities, insurance products, real estate, bank instruments, commodities contracts, derivative contracts, collectibles, or other financial products.” One commenter asked CFP Board to delete the phrase “other financial products” or define specifically what it includes. CFP Board deliberately included the phrase “or other financial products” for the definition to be interpreted broadly. The language purposefully signals that the list is not all-inclusive.

## **IX. CONCLUSION**

CFP Board thanks the members of the Commission on Standards (Chair Ray Ferrara, CFP®, Chris Beard, CFP®, Allison Bishop, David Foegal, CFP®, Diahann Lassus, CFP®, Linda Leitz, CFP®, Terry Lister, Sue Meisinger, Matt Murphy, CFP®, Robert Plaze, Christopher Rand, CFP®, Peter Richardson, CFP®, Barbara Roper, and Jeffrey Sills, CFP®) and former Board Chair Blaine Aikin, CFP®, for their extraordinary service in support of the development of the *Code and Standards*.



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